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9 Attorneys for Nonparty SAN DIEGO COUNTY SHERIFF'S DEPARTMENT

10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 MICHAEL LUSTIG,

16 Defendant.

Case No. 13CR3921-BEN

**SAN DIEGO COUNTY
SHERIFF'S DEPARTMENT'S
OBJECTION TO SUBPOENA;
MOTION TO QUASH
SUBPOENA**

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FILED

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FEB 18 2014

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

1 The San Diego County Sheriff's Department objects to the attached
2 subpoena, propounded by counsel for Defendant MICHAEL LUSTIG, and moves
3 this court for an order quashing the subpoena. The objection and motion are based
4 on the attached declaration of Sanford A. Toyen, and are summarized as follows:

- 5 - The subpoena, which required the appearance of (unnamed) witness in
6 Department 5A at 2:00 P.M. on Tuesday February 18, 2013 (along with
7 the production of three categories of law enforcement documents), was
8 not served on a representative of the Sheriff's Department until Thursday,
9 February 13. With the court's closure on Monday, February 17, the
10 subpoena sought to command the (unnamed) witness to gather all three
11 categories of documents and appear in court on only one full working
12 day's notice.
- 13 - The subpoena fails to comply with F.R.Cr.P. Rule 17(d), in that it
14 demands the court appearance of a "Custodian of Records" for the
15 Sheriff's Department , but did tender witness fees nor a mileage
16 allowance.

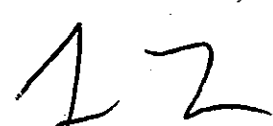
17 The court may quash or modify a subpoena if compliance would
18 unreasonable or oppressive. (F.R.Cr.P. Rule 17(c)(2)). Under the circumstances
19 described above, compliance is clearly unreasonable and oppressive.

20 Respectfully submitted,

21 Dated: February 14, 2014

22 WILLIAM D. GORE, Sheriff

23 By

24 
25 Sanford A. Toyen,
26 Legal Advisor

27 Attorneys for Nonparty
28 SAN DIEGO COUNTY SHERIFF'S
DEPARTMENT

DECLARATION OF SANFORD A. TOYEN

1. The matters set forth herein are known to me personally. If called to testify, I could competently testify at trial.
2. I am attorney licensed by the State of California to practice law. I have been so licensed since 1995.
3. I am employed by the San Diego County Sheriff's Department as a Legal Advisor. I have held this position since 2002.
4. On February 13, 2014, at my office at Sheriff's Headquarters (9621 Ridgehaven Ct), I was notified that there was a man in the lobby of the building wanting to serve a subpoena. I am authorized to accept subpoenas on behalf of Sheriff Gore and the San Diego County Sheriff's Department.
5. The man identified himself as Steve Bellizzi, and handed me the subpoena which I can identify as a copy of the attached document.
6. I pointed out to Mr. Bellizzi that today was the 13th, and that the subpoena was seeking records and a personal appearance on the 18th, which was less than two business days away.
7. Mr. Bellizzi said something to the effect of that I should call Mr. Timothy Scott, the attorney for the defendant, and that something could be worked out. He said something about the fact that there wasn't even a hearing on the 18th, but rather some sort of status conference. I again repeated that the subpoena was untimely. Mr. Bellizzi assured me that Mr. Scott would be very reasonable.
8. I immediately went back up to my office and contacted the Mr. Scott's number as listed on the subpoena. No one answered the phone, and my call went to a voice mail tree. I left a message for Mr. Scott to call me.
9. The next day, I again telephoned Mr. Scott at the number listed on the subpoena. I was able to speak to a receptionist. I left a message with her

1 to please have Mr. Scott telephone me as soon as possible.

2
3 10. As I draft this declaration, it is 3:05 PM on Friday, February 14, 2014.
4 Mr. Scott has yet to return either of my calls. The next business day is
5 Tuesday, February 18, which is the appearance date on the subpoena. I
6 have made a good faith effort to reach Mr. Scott and to avoid the need for
7 filing this objection and motion to quash. However, Mr. Scott has caused
8 the Sheriff's Department to be served with an untimely subpoena less
9 than two business days ahead of the hearing, and then has failed to return
10 multiple calls left for him that may have been able to resolve the matter.
11 There is simply nothing more than I am able to do but file this objection
12 and motion to quash.

13 11. I declare under penalty of perjury that the foregoing is true and accurate
14 to the best of my recollection and belief.

15 Executed on this 14th day of February 2014, at San Diego, California

16 
17 _____
18 Sanford A. Toyen

AO 89 (Rev. 08/09) Subpoena to Testify at a Hearing or Trial in a Criminal Case

UNITED STATES DISTRICT COURT

for the

Southern District of California

United States of America)

v.)

Michael Lustig,)

Case No. 13CR3921-BEN)

Defendant)

SUBPOENA TO TESTIFY AT A HEARING OR TRIAL IN A CRIMINAL CASE

To: Custodian of Records
 San Diego Sheriff's Office
 9621 Ridgehaven Court
 San Diego, CA 92123

YOU ARE COMMANDED to appear in the United States district court at the time, date, and place shown below to testify in this criminal case. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Place of Appearance: United States District Court 221 West Broadway San Diego, CA 92101	Courtroom No.: 5A Date and Time: 02/18/2014 2:00 pm
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You must also bring with you the following documents, electronically stored information, or objects (*blank if not applicable*):


SEE ATTACHMENT

(SEAL)

Date:

2/13/14

CLERK OF COURT


 Signature of Clerk or Deputy Clerk

The name, address, e-mail, and telephone number of the attorney representing (*name of party*) _____, who requests this subpoena, are:

Michael Lustig

Timothy A. Scott; CA Bar No. 215074
 1350 Columbia Street, Suite 600
 San Diego, CA 92101
 Email: tscott@timscottlaw.com
 Phone: (619) 794-0451

United States of America vs. Michael Lustig
Case Number: 12CR3921 - BEN

You must also bring with you the following documents, electronically stored information, or objects:

1. The "Tactical Operations Plan" used by the North County Regional Prostitution/Human Trafficking Task Force (which the San Diego Sheriff's Department is a participant in) for the prostitution sting at the Howard Johnson Motel, located at 607 Leucadia Blvd, Encinitas, CA 92024, on June 8, 2013.
2. The San Diego Sheriff's Department's Policy and Procedures manual sections on Vehicle Searches, including, but not limited to, policy and procedures on searches incident to arrest and inventory searches.
3. The North County Regional Prostitution/Human Trafficking Task Force Policy and Procedures manual sections on Vehicle Searches, including policy on searches incident to arrest and inventory searches. The San Diego Sheriff's Department is a participant in the North County Regional Prostitution/Human Trafficking Task Force. If the North County Regional Prostitution/Human Trafficking Task Force's policy and procedures on Vehicle Searches are different than those of the San Diego Sheriff's Department, we would request a copy of those also.